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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA,

Case No. 2:05-cr-00364-JCM-VCF

10 Plaintiff,

ORDER

11 v.

12 ANEAL V. MAHARAJ,

13 Defendant.

14 Currently before the court is petitioner Aneal Maharaj's motion for extension of time to
15 file a 28 U.S.C. § 2255 petition. (Doc. # 165). The government filed a response. (Doc. # 167).

16 Also before the court is petitioner's motion directing prison authorities to allow access to
17 petitioner's legal documents. (Doc. # 166). The government filed a response. (Doc. # 167).

18 Finally, before the court is petitioner's motion for leave to file a supplemental exhibit in
19 support of his motion for extension of time. (Doc. # 168).

20 **I. Motion for extension of time. (Doc. # 165).**

21 Petitioner requests an extension of time to file his motion to vacate, set aside, and/or correct
22 his sentence under 28 U.S.C. § 2255. (*See* doc. # 165). Petitioner states that he has been unable
23 to prepare his § 2255 motion because prison authorities will only allow petitioner's counsel to send
24 paper documents to him that are absolutely pertinent to the case. (*See id.*). The prison, for storage
25 and safety reasons, said they could not accommodate the eight boxes of documents, 98 discovery
26 CDs and a hard drive containing the information that petitioner attempted to obtain. (*See id.*).

27 § 2255 grants petitioner a one-year period of limitation from the date on which the
28 judgment of conviction became final to make a motion. *See* 28 U.S.C. § 2255(f)(1). Petitioner

1 states that the court's amended judgment on August 6, 2013 started the clock running, thus giving
2 petitioner until August 6, 2014 to file a § 2255 petition. Petitioner filed his motion for an extension
3 of time on September 3, 2014. (Doc. # 165).¹ Therefore, petitioner's motion for an extension of
4 time is untimely filed, since he filed it after the August 6, 2014 deadline.

5 Further, even if petitioner's motion were timely filed, this court does not have jurisdiction
6 to grant petitioner's extension because he has not filed a § 2255 petition. The exercise of federal
7 jurisdiction under the Constitution depends on the existence of a case or controversy. *U.S. Nat'l*
8 *Bank v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 446 (1993); *see also Johnson v.*
9 *Weinberger*, 851 F.2d 233, 235 (9th Cir. 1988) (Article III, Section 2 of the United States
10 Constitution restricts adjudication in federal courts to cases and controversies). A case or
11 controversy exists when one party demonstrates that it has suffered injury-in-fact which fairly can
12 be traced to acts or omissions of the second party and when there is a substantial likelihood that
13 the relief requested will redress the injury claimed. *Johnson*, 851 F.2d at 234.

14 A federal court lacks jurisdiction to consider the timeliness of a habeas petition unless and
15 until such a petition is actually filed. *See Ford v. Warden*, 2008 WL 2676842, at *1-2 (C.D. Cal.
16 2008). Otherwise there is no case or controversy within the meaning of Article III of the
17 Constitution. *See id.* (the Constitution's "case or controversy" jurisdictional requirement
18 precludes advisory opinions that a statute of limitations will not bar an anticipated, but not yet
19 filed, federal habeas petition); *see also United States v. Leon*, 203 F.3d 162, 163 (2d Cir. 2000)
20 (granting government motion to dismiss appeal from order denying motion to submit out of time
21 petition under 28 U.S.C. § 2255 because no case or controversy in absence of filing of petition);
22 *Calderon v. Ashmus*, 523 U.S. 740, 746-49 (1998) (no "case or controversy" where prisoners
23 sought declaratory relief to determine the time limits that would govern future habeas actions).

24 Here, because petitioner has not actually filed a § 2255 petition, there is no action or
25 proceeding pending and no case or controversy to be heard. If and when petitioner actually files

26 ¹ Petitioner filed his first motions for extension of time (doc. # 162), and directing prison authorities to
27 allow access to petitioner's legal documents (doc. # 163) with the court *pro se* on August 6, 2014. The court denied
28 both of petitioner's motions without prejudice under Local Rule IA 10-6(a), because petitioner was, and continues to
be, represented by counsel. Therefore, under Rule IA 10-6(a), the petitioner may not file motions on his own behalf
when he is represented by an attorney. Petitioner's attorney filed the instant motions.

1 a petition for writ of habeas corpus, the court may consider an argument that such a petition should
2 be considered timely. Unless and until that occurs, however, this court is without jurisdiction to
3 consider the matter.

4 **II. Motion directing prison authorities to allow access to petitioner's legal documents.**
5 **(Doc. # 166).**

6 Petitioner moves for a court order "direct[ing] prison authorities to allow access to
7 Petitioner's legal documents." (Doc. # 166). Though the prison is willing to grant petitioner access
8 to paper documents essential to his case, for storage and safety reasons, the prison claims they
9 cannot accommodate the eight boxes of documents, 98 discovery CDs and a hard drive containing
10 the information that petitioner asks to obtain. (*See* doc. # 166).

11 Petitioner alleges that the prison's numerous lockdowns, and the prison's unwillingness to
12 supply him with all of the legal documents pertaining to his case have impeded him from preparing
13 a § 2255 motion. (*See* doc. # 166). Therefore, petitioner asserts this court should intervene to
14 instruct prison authorities to allow petitioner access to all of his legal documents.

15 The government argues that the court should consider petitioner's motion as a 28 U.S.C. §
16 2241 petition. "Generally, motions to contest the legality of a sentence must be filed under § 2255
17 in the sentencing court, while petitions that challenge the manner, location, or conditions of a
18 sentence's execution must be brought pursuant to § 2241 in the custodial court." *Hernandez v.*
19 *Campbell*, 204 F.3d 861, 865 (9th Cir. 2000). The court, however, is not persuaded by this
20 argument. Petitioner's request for access to all of his court documents is not a challenge to the
21 conditions of his sentence's execution, but an attempt to gain access to documents petitioner feels
22 are necessary to bring an effective § 2255 challenge before the court. Therefore, the court
23 addresses this motion as an issue of access to the courts.

24 Prisoners have a constitutional right of access to the courts. *See Lewis v. Casey*, 518 U.S.
25 343, 346 (1996); *Bounds v. Smith*, 430 U.S. 817, 821 (1977); *Bradley v. Hall*, 64 F.3d 1276, 1279
26 (9th Cir. 1995) (discussing the right in the context of prison grievance procedures). This right
27 requires prison officials to "assist inmates in the preparation and filing of meaningful legal papers
28 by providing prisoners with adequate law libraries or adequate assistance from persons trained in

1 the law.” *Bounds*, 430 U.S. at 828. The right, however, only requires that prisoners have the
2 capability of bringing challenges to sentences or conditions of confinement. *See Lewis*, 518 U.S.
3 at 356-57. Moreover, the right is limited to non-frivolous criminal appeals, habeas corpus actions,
4 and § 1983 suits. *See id.* at 353 n. 3 & 354-55. Therefore, the right of access to the courts is only
5 a right to present these kinds of claims to the court, and not a right to discover claims or to litigate
6 them effectively once filed. *See id.* at 354-55.

7 As a jurisdictional requirement flowing from the standing doctrine, the prisoner must allege
8 an actual injury. *See id.* at 349. “Actual injury” is prejudice with respect to contemplated or
9 existing litigation, such as the inability to meet a filing deadline or present a claim. *See id.* Delays
10 in providing legal materials or assistance which result in prejudice are “not of constitutional
11 significance” if the delay is reasonably related to legitimate penological purposes. *Id.* at 362.

12 In the instant case, petitioner claims that he is injured by not being allowed access to each and
13 every legal document in his case. Further, petitioner claims that prison authorities severely limited
14 access to the law library after serious disturbance in the prison on May 20, 2012. Since this
15 disturbance, petitioner alleges that access to the law library has been restricted to an “invitation
16 only” system and for periods of five hours in length maximum.

17 Petitioner further submits documents showing his communications with prison officials
18 regarding his attempts to access all of the legal materials for his case. The prison officials clearly
19 state that they can provide some of the legal mail, but are unable to accommodate petitioner’s
20 request for all of the legal documents pertaining to his case for safety and storage reasons. The
21 warden also communicated with petitioner’s attorney the prison’s inability to store the amount of
22 materials petitioner requested.

23 The court finds that the prison has a legitimate penological purpose in maintaining the
24 safety and security of the prison by only allowing prisoners access to pertinent documents provided
25 in paper form. This is not the type of “actual injury” contemplated by the courts in a denial
26 of access to legal documents case. Therefore, petitioner’s motion for a court order directing prison
27 authorities to allow access to petitioner’s legal documents is denied.

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